

MINUTES

LAFCO REGULAR MEETING

Wednesday, July 9, 9:00 a.m.

Planning Commission Hearing Room, Hall of Administration

10 Civic Center Plaza, Santa Ana

(Any member of the public may request to speak on any agenda item at the time that item is being considered by the Commission.)

1. CALL TO ORDER

Chair Arlene Schafer called the regular meeting of the Local Agency Formation Commission (LAFCO) to order at 9:02 a.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Tom Wilson led the pledge of allegiance.

3. ROLL CALL

The following commissioners and alternates were present:

- **Commissioner Randal Bressette**
- **Commissioner Peter Herzog**
- **Commissioner Arlene Schafer**
- **Commissioner Susan Wilson**
- **Commissioner Tom Wilson**
- **Commissioner John Withers**
- **Alternate Commissioner Robert Bouer**
- **Alternate Commissioner Rhonda McCune**
- **Alternate Commissioner Charley Wilson**

The following LAFCO staff members were present:

- General Counsel Scott Smith
- Executive Officer Dana M. Smith
- Assistant Executive Officer Bob Aldrich
- Project Manager Ken Lee
- Policy Analyst Kim Koeppen
- Policy Analyst Jay Wong
- Executive Assistant/Commission Clerk Danielle Ball
- Administrative Assistant Daphne Charles

4. APPROVAL OF MINUTES

a.) June 11, 2003 – Regular Commission Meeting

MOTION: Approve minutes from June 11, 2003 without revision (John Withers)
SECOND: Peter Herzog
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Susan Wilson, Tom Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

5. PUBLIC COMMENT

Chair Schafer requested public comments on any non-agenda item and received no response. She closed the public comment agenda item without any statements from the public.

6. CONSENT CALENDAR

a.) Legislative Report

MOTION: Approve consent calendar item 6a (Peter Herzog)
SECOND: John Withers
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Susan Wilson, Tom Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

7. PUBLIC HEARING

- a.) Emerald Bay Service District Reorganization (RO 01-12) Reconsiderations
- b.) TRA Annexation to the Orange County Vector Control District (DA 03-02)
- c.) Municipal Water District of Orange County (MWDOC) Boundary Changes

7a. Executive Officer Smith presented an overview of the Emerald Bay Service District's (EBSD) application to detach the 149-acre gated community of Emerald Bay from its current water provider, the Laguna Beach County Water District (LBCWD), and activate EBSD's latent power to provide water to the same service area through a contractual agreement with LBCWD. She summarized the Commission's actions from November 4, 2002, when the Commission opted to deny EBSD's application, and the Commission's subsequent decision to approve the district's request to reconsider the application.

Ms. Smith stated that staff met with representatives from EBSD, including the district's legal counsel, general manager, and two board members. She explained that through frank discussions about ambiguities that existed in the various contracts and agreements with regard to water delivery to Emerald Bay, staff and EBSD were able to reach a compromised solution in the form of revised terms and conditions.

Project Manager Lee summarized the mutually agreed upon revised terms and conditions making the application acceptable under the constraints of the law and the Commission's mandates. The terms and conditions require the LBCWD board of directors' formal concurrence that LBCWD would deliver, or "wheel," wholesale water from the Municipal Water District of Orange County (MWDOC) to EBSD and that, while the wholesale water would be delivered to EBSD through LBCWD's water transmission system, the wholesale water supplied by MWDOC would not be a part of LBCWD's allocation of water from MWDOC.

Commissioner T. Wilson commented that, through discussions with EBSD and LAFCO staff, he was satisfied that all parties engaged in due diligence. He moved staff's recommendations to approve the project subject to the specified terms and conditions. **Commissioner Withers** seconded the motion.

Commissioner Bressette voiced his concerns regarding liability issues specifically related to potential catastrophic damages to the underlying infrastructure. He called the Commission's attention to the insurance provisions outlined on page 12 of the service agreement, stating that it appeared to leave the residents of Emerald Bay liable for the cost of infrastructure repairs in the event of a catastrophic occurrence.

Project Manager Lee responded that the Emerald Bay Homeowners Association and EBSD had taken the position that they each had their own liability insurance that would protect them in the event of a catastrophic occurrence.

Legal counsel Smith commented on the validity of the original contract, stating that the intended meaning of the term "purchase" as used in the service agreement on page 12 would be meant as the wheeling or conveyance of water. He said that staff had raised the same concerns related to the ambiguity of the term "purchase" and that the revised condition would make it clear that the commodity itself, the water, would not be purchased from LBCWD but rather the conveyance of the water would be purchased by EBSD.

Commissioner Bressette questioned the use of reserves in the event of catastrophic damage to the infrastructure or for future replacement of such. He stated that Bill Hart of EBSD had given conflicting testimony to the Commission, in November stating that the entire property tax transfer would go into the district's reserves and then in January stating that the tax allocation would be used to reduce the rates paid by the ratepayers and to pay for the administrative costs of providing water. He asked if staff knew specifically what EBSD intended to do with the tax allocation.

Project Manager Lee responded that the Commission's responsibility was to ensure that EBSD had an adequate plan of service. He acknowledged that the Commission and staff had raised questions in the past regarding the proposed tax allocation and whether it was sufficient to build an adequate reserve for replacement and maintenance of the infrastructure. He said that the Commission's charge was to determine the viability issue, i.e., whether or not the plan of service would be adequate and feasible.

Commissioner Bressette stated that the proposal could not ensure the provision of water and protection of infrastructure without raising rates. He added that the action was contrary to the spirit of Cortese-Knox-Hertzberg, contrary to the mission of the Commission, bad public policy, and not in the best interests of the residents of Emerald Bay. He suggested that the answers EBSD provided with regard to its insurance coverage were simply "smoke and mirrors."

Commissioner Withers suggested that some of **Commissioner Bressette's** concerns may be adequately addressed by testimony provided in the public hearing.

Chair Schafer requested that **Commissioner T. Wilson** rescind his motion pending public hearing on the proposal. He complied, and **Chair Schafer** opened the public hearing.

Bill Hart, a member of the EBSD board of directors, spoke on behalf of the district board. He thanked the Commission and especially LAFCO staff for its willingness to work with EBSD on its proposal. He expressed the board's concurrence with staff recommendations, stating that he felt that the revised terms and conditions adequately alleviated any concerns previously expressed by the Commission and staff. He said that the insurance issue had been thoroughly addressed, adding that the current coverage was sufficient to protect the community in the event of catastrophic damage to the infrastructure and that coverage would remain adequate in the future.

Paula Meyer, general counsel from LBCWD, presented before the Commission. She stated that she would present the revised terms and conditions to the LBCWD's board of directors in September 2003.

Commissioner Herzog asked Ms. Meyer to comment on the service connection agreement established between MWDOC and EBSD. He stated that, though LBCWD would not be party to the agreement, there would be certain inferred requirements of LBCWD. He asked if the LBCWD board was aware of these conditions and how the district would formally accept these responsibilities.

Ms. Meyer stated that LBCWD was aware of the agreement but had refused to sign it, because it would effectively change the terms of the district's existing agreements with MWDOC. She said that LBCWD would honor its agreement with EBSD and its existing agreements with MWDOC, but the terms of the agreement between MWDOC and EBSD would be non-binding on LBCWD, as neither entity has the power to make LBCWD do anything without LBCWD concurrence.

Commissioner Bressette asked if there were certain actions listed within the agreement between MWDOC and EBSD that would be contrary to agreements that LBCWD has with either entity.

Ms. Meyer responded that, for example, the agreement between MWDOC and EBSD would change MWDOC's access to the LBCWD water system in a way that the LBCWD board was not willing to support. She said that there could possibly be other items of contention, but she did not have them in mind.

Chair Schafer requested additional comments from members of the public. Receiving no response, she closed the public hearing.

Commissioner T. Wilson restated his original motion that the Commission follow staff's recommendations to approve the project subject to the specified terms and conditions. **Commissioner Withers** seconded the motion.

Commissioner Bressette stated that the testimony of LBCWD's legal counsel resulted in even more skepticism on his part. He suggested that, in light of LBCWD's position on the service agreement, the district's unwillingness to submit an official position on the proposal was a sign of opposition rather than support as had been suggested. He offered a friendly amendment to the motion, suggesting that the Commission set a time limit of 90 days from Commission approval for EBSD to comply with term and condition "1a" from the revised staff report, which would require the LBCWD board to take formal action to ratify "the letter dated April 2, 2003 from the General Manager of LBCWD to LAFCO, affirming that it is the position of LBCWD that the 'Service Agreement' entered into by and between the Emerald Bay Service District ('EBSD') and LBCWD on September 18, 2001 provides that 'wholesale water will be delivered to EBSD through LBCWD's water transmission system' and that 'this wholesale water is supplied by Municipal Water District of Orange County (MWDOC) and will not be a part of LBCWD's allocation of water from MWDOC.'"

Commissioner S. Wilson asked **Commissioner Bressette** to clarify the intent of his proposed amendment to the motion.

Commissioner Bressette responded that the amendment would require all parties to take action within a reasonable period of time and would also serve to ensure that the reorganization would not become an open-ended proposal dragging on and on for years.

Commissioner T. Wilson asked Mr. Hart and Executive Officer Smith to respond on the proposed amendment to the motion.

Mr. Hart expressed his reluctance to put a time limit on the response. He assured the Commission that EBSD would be as forthcoming and expeditious as possible in complying with the terms and conditions but added that he couldn't control the

amount of time it would take the other entities, namely LBCWD and MWDOC, to take action.

Commissioner Bressette offered an extended timeframe, asking Mr. Hart to specify a length of time that he would deem as reasonable. Mr. Hart declined to name a timeframe, stating it would be impossible for him to anticipate the methodologies and actions of the other boards involved.

Executive Officer Smith clarified that the 90 days proposed by **Commissioner Bressette** would not be applicable to MWDOC, just LBCWD. She reasoned that, from the Commission's perspective, a timeframe would ensure that the project wouldn't enter into an indefinite holding period pending compliance with the terms and conditions of the proposal. She said that, while there wasn't any indication that the LBCWD board wouldn't take action at its September meeting, she felt that six months was a reasonable period of time to expect compliance with the agreed upon terms and conditions.

Commissioner Herzog suggested that the Commission could condition that a staff report regarding the matter come back before the Commission in six months, adding that if no action had been taken by the districts, then the Commission could take action of its own.

Executive Officer Smith responded that, once the application was approved, there was no provision for the Commission to revisit the issue. She said that it was solely the Commission's discretion as to whether or not to impose the timeframe as part of the terms and conditions.

Commissioner Bressette offered flexibility in setting a timeframe, proposing that perhaps 180 days would be acceptable to the applicant.

Commissioner Bouer asked LBCWD's legal counsel to respond to the discussion.

Ms. Meyer stated that the LBCWD board of directors currently meets quarterly. She said the next meeting would be held in September and that she would request that the matter be added to the agenda.

Commissioner T. Wilson said that he would stick with his original motion and not accept the friendly amendment. He added that he felt all parties would remain diligent in seeing the project through to fruition.

Chair Schafer requested additional statements from the Commission. Receiving no response, she called for a roll call vote.

MOTION: **Approve EBSD reorganization based on the terms and conditions outlined in staff's revised recommendations (Tom Wilson)**
SECOND: **John Withers**

FOR: Peter Herzog, Arlene Schafer, Susan Wilson, Tom Wilson,
John Withers
AGAINST: Randal Bressette
ABSTAIN: None
MOTION PASSED

Commissioner Withers expressed his disappointment that MWDOC and LBCWD neglected to send managerial or board representation to the public hearing on the EBSD reorganization. He said that absence of the affected parties served to hinder the Commission's ability to conduct business.

- 7b.** Project Manager Lee summarized the Commission's activity related to the Orange County Vector Control District's (OCVCD) annexation application, which the Commission continued at the May 2003 meeting. He further explained that, since the continuation, the OCVCD requested additional time to better understand the negotiation process under the special provisions of Section 99.01 of the Revenue and Taxation Code. Given the fact that LAFCO is prohibited from continuing a public hearing on a proposal more than 70 days from the original hearing date, Mr. Lee recommended that the Commission withdraw the OCVCD proposal from LAFCO's public hearing calendar. He said that the matter would be brought before the Commission once again after the affected agencies reach agreement on a property tax transfer.

MOTION: Withdraw the proposed *TRA Annexation to the Orange County Vector Control District (DA 03-02)* from the Commission's public hearing calendar (Randal Bressette)
SECOND: Susan Wilson
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Susan Wilson, Tom Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

- 7c.** Assistant Executive Officer Aldrich summarized MWDOC's request that LAFCO consider boundary adjustments for six separate parcels as a clean-up to MWDOC's existing boundaries. He said that all of the parcels involved annexations, detachments, or reorganizations previously approved by LAFCO involving the cities of Anaheim, Fullerton, or Santa Ana dating as far back as 1989. He stated that the Executive Committee approved MWDOC's request that LAFCO waive the application fees for processing the proposals in April 2003, adding that MWDOC agreed to absorb all of the direct costs. He said that the Commission's approval of the proposal would ensure that MWDOC's service boundaries do not overlap with those of the Metropolitan Water District of Orange County.

Commissioner Bressette moved staff recommendations with the exception of the fee waiver. He stated that he could see no logical reason why the special districts should be granted fee waivers when the cities pay the application fees in full for their

projects, and he asked staff if the rejection of the fee waiver would change the terms and conditions.

Executive Officer Smith responded that, if the Commission chose not to waive the fees, the terms and conditions would be modified to make the boundary changes contingent on the payment of all fees.

Commissioner Bressette modified his original motion to include a revision to the original terms and conditions, making the boundary changes contingent on the payment of all fees as indicated by Ms. Smith. **Commissioner S. Wilson** seconded the motion.

Assistant Executive Officer Aldrich interjected that, in retrospect, the MWDOC reorganizations should have been included as part of the city annexations and reorganizations.

Executive Officer Smith added that MWDOC had originally requested that LAFCO pick up the full cost, believing that LAFCO itself was culpable and should cover the expenses related to the required clean-up actions. She said that, after many discussions with MWDOC, the fee waiver represented an effective compromise.

Commissioner McCune asked if staff was of the opinion that MWDOC would forego the boundary changes if required to pay the fees in full.

Ms. Smith responded that she would defer the answer to MWDOC's representative.

Lee Jacobi, an engineer from MWDOC, presented before the Commission. He said that the district's position was that of an innocent bystander. He stated that when the County and cities changed their borders, MWDOC's boundaries should have been amended concurrently. He said the district was unaware of the actions affecting its border until contacted by the Registrar of Voters and then expeditiously contacted LAFCO to take the appropriate actions ensuring a consistent boundary. He assured the Commission that MWDOC did not pursue this action in order to take over additional territory but rather had the intent of eradicating the overlap caused by the actions of other municipalities.

Commissioner S. Wilson asked the amount of the district's operating budget.

Mr. Jacobi approximated that MWDOC's operating budget was \$3.5M annually.

Commissioner Herzog commented that the Executive Committee had discussed **Commissioner Bressette's** concerns about precedent setting when presented with the request for fee waiver. He said that the committee viewed the action primarily as an equity issue, a unique situation whereby MWDOC would not be penalized for actions enacted by other agencies. He said that the fee waiver would not be precedential in nature and should not be taken by anyone in that regard.

Commissioner Bressette withdrew his motion. He then motioned staff's recommendations, including the fee waiver, acknowledging that LAFCO was partially at fault for the oversight. **Commissioner T. Wilson** seconded the motion.

Commissioner T. Wilson commented that MWDOC's willingness to cover the direct costs related to the preparation of notices, postage, and State Board of Equalization fees was equitable given the history of actions and the limited amount of staff resources directed at the proposal.

At **Commissioner T. Wilson's** request, **Chair Schafer** identified the executive committee's members as the Chair, Vice Chair, and past Chair – currently, **Chair Schafer, Vice Chair Smith**, and **Commissioner Herzog**.

Commissioner Withers left the Commission meeting during the discussion of agenda item 7c.

MOTION: Approve MWDOC boundary changes, approving the fee waiver and subject to the terms and conditions outlined in the staff report (Randal Bressette)
SECOND: Tom Wilson
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Charley Wilson, Susan Wilson, Tom Wilson
AGAINST: None
ABSTAIN: None
MOTION PASSED

8. COMMISSION DISCUSSION

a.) Update on the Sphere of Influence Amendment and Annexation Applications for West Santa Ana Heights

- 8a.** Executive Officer Aldrich presented the third in a series of bimonthly updates regarding the area of West Santa Ana Heights (WSAH). He summarized the actions taken at the September 16, 2002 Commission meeting and activities occurring subsequent to the Commission's decision to continue the consideration of WSAH. He reminded the Commission that the City of Newport Beach had expressed an interest in annexing not only WSAH but also the Santa Ana Country Club and the residential/commercial areas south of Mesa Drive contingent upon the city taking over the redevelopment project area for WSAH. He further stated that discussions between the city and County remain on-going, the next step being the development of a draft agreement transferring the redevelopment agency from the County to the city.

Mr. Aldrich indicated that the City of Newport Beach recently hired a planning consulting firm to complete the LAFCO application and required general plan and pre-zoning amendments associated with annexing the areas. He said that the pre-zoning and general plan amendments would be considered by the Newport Beach city council on July 22, 2003 and added that the city would like to have the entire area

annexed by July 2004. He also reminded the Commission that the City of Costa Mesa's application to annex WSAH remained active and that both cities' applications would be considered by the Commission concurrently at a future date.

9. COMMISSIONER COMMENTS

Chair Schafer requested additional comments from the commissioners and received no response. Receiving no response, **Chair Schafer** closed the commissioner comment agenda item without any statements from the Commission.

10. INFORMATIONAL ITEMS

- a.) City Detachment Pre-Hearing – Santa Grove Self Storage Reorganization (RO 03-13)
- b.) Status Update re Commissioners' Terms of Office

10a. Project Manager Lee presented an overview of the proposed Santa Grove Self Storage Reorganization (RO 03-13), stating that Government Code Section 56751 requires LAFCO to place the proposal on its agenda for information purpose only. He added that if the detaching city opposed to the application, it would have 60 days to submit a resolution to LAFCO to effectively kill the application. He said that, to his knowledge, the City of Santa Ana concurred with the detachment and would submit a resolution expressing their support of such, allowing LAFCO to waive the 60 day waiting period.

10b. Executive Officer Smith directed the commissioners to review their current terms of office as presented by staff.

11. CLOSED SESSION

None

12. ADJOURNMENT

Chair Schafer adjourned the meeting at 10:00 a.m.

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DANA M. SMITH
Executive Officer
Orange County Local Agency Formation Commission

By: _____
Danielle M. Ball
Commission Clerk